

Appendix B

Architectural and Engineering Services Procurement Regulations

As adopted by the Authority Board on August 23, 2006

Title 21 California Code of Regulations

§ 10000. Purpose and Scope

The purpose of these regulations is to establish those procedures authorized and required by legal enactments, including the following:

-Chapter 1434 of the Statutes of 1974, as amended, which added Chapter 10(commencing with *Section 4525*) of *Division 5 of Title 1 of the Government Code*.

-Chapter 796 of the Statues of 1996, which added Division 19.5 (commencing with *Section 185000*) of the *Public Utilities Code*.

-Initiative Measure of 2000 (Proposition 35, 4, approved November 7, 2000, effective November 8, 2000), which added Chapter 10.1 (commencing with *Section 4529.10*) of *Division 5 of Title 1 of the Government Code*.

-Article XXII of the California Constitution, Article XXII, which was added by Initiative Measure (Proposition 35, 4, effective November 8, 2000, approved November 7, 2000), and amended the California Constitution.

Such procedures shall require the securing of services covered under Chapter 10 and Chapter 10.1 of the Government Code on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required.

The California High-Speed Rail Authority is authorized to contract with qualified entities for the services listed in *Government Code Section 4525(d), 4525(e), 4525(f) and 4529.10*.

The regulations in this chapter are intended to be broad enough to encompass all matters needed for the California High-Speed Rail Authority to carry out its mission and vision, which include the duties to provide a statewide high-speed train system for users and workers; integrating with existing transportation services to optimize transportation system throughput and provide dependable travel times; improve delivery of projects and services; provide mobility choices through strategic partnerships; and, preserve and enhance California's resources and investments, and to fulfill its statutory mandates.

§ 10000.1. Definitions

As used in these regulations:

(a) Firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture or engineering, as defined in section 10000.1(e) of these regulations.

(b) A Small business" firm is a firm certified as a small business" in accordance with *Section 14837 of the Government Code* or its successor provisions.

(c) Executive Director" is the Executive Director of the California High-Speed Rail Authority.

(d) Authority" is the California High-Speed Rail Authority.

(e) The term architectural and engineering (hereafter A&E") services" shall include all architectural, landscape architectural, environmental, engineering, land surveying, and construction project management services, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, in support of the aforementioned services, including permitting and environmental studies, right-of-way service, design phase services, construction phase services, public outreach and meeting facilitation related to the foregoing. A&E services" shall not include legal services rendered to the Authority.

(f) Project" includes a project as defined in *Section 10105 of the Public Contract Code*, or as defined in *Public Resources Code Section 21065*. Project shall also include any and all projects and works in which the Authority is authorized to engage or for which the Authority is authorized to contract pursuant to the High Speed Rail Act, *Public Utilities Code sections 185000 et seq.*

(g) RFQ" is an acronym for Request for Qualifications, the solicitation document used to request a Statement of Qualifications of firms that perform A&E services.

(h) SOQ" is an acronym for Statement of Qualifications, the response to an RFQ or annual announcement submitted by firms that perform A&E services.

§ 10000.2. Annual Announcements for Statement of Qualifications and Performance Data

On an annual basis the Executive Director shall request SOQs for specified A&E services by statewide announcement as provided in Section 10000.5 of these regulations. This announcement must, at a minimum, include a description of the project or proposed services, an Authority contact, and the date, time and location for submission of SOQs. The announcements may also identify the criteria upon which the award will be made.

§ 10000.3. Establishment of Criteria

The Executive Director shall establish criteria, which will comprise the basis for the selection of a firm for each project. The criteria shall include such factors as professional excellence, demonstrated competence, specialized experience of the firm, education and experience of key personnel to be assigned, staff capability, workload, ability to meet schedules, nature and quality of completed work, reliability and continuity of the firm and/or subcontractors, location, or other considerations deemed relevant. Such factors shall be weighted by the Executive Director according to the nature of the project, the needs of the State, and complexity and special requirements of the specific project.

§ 10000.4. Estimate of Value of Services

Before any discussion with any firm concerning fees may take place, the Executive Director shall cause an estimate of the value of such services to be prepared. This estimate may be based on such factors as a market survey, comparison with fees paid to other departments' or agencies' contractors for similar services, or comparison with the salaries of comparable positions within the Authority, within State service, or within other governmental entities. This estimate shall serve as a guide in determining fair and reasonable compensation for the services rendered. Such estimate shall be, and remain, confidential until approval of contract or abandonment of any further procedure for the services to which it relates. At any time the Executive Director determines the State's estimates to be unrealistic due to rising costs, special conditions, or for other relevant considerations, the estimate shall be reevaluated and modified if necessary.

§ 10000.5. Request for Qualifications -- Publication of Announcement

(a) Where a project or Authority need requires A&E services, the Authority shall make a statewide announcement through the publications of the respective professional societies.

The Authority may also advertise to reach providers of services within the appropriate trade or profession by publishing the announcement through electronic communications media which support bulletin boards or Internet web sites that have demonstrated statewide accessibility and are regularly maintained at established addresses by professional organizations which are representative of the services to be procured or in a construction trade journal, or publicize the requirements for services in other appropriate publications.

Failure of any professional society or construction trade journal to publish the announcement shall not invalidate any contract.

(b) The announcement shall include information describing the project or services, an Authority contact for obtaining RFQs, and the due date, time and location for submission of SOQs. The announcement may also identify the criteria upon which the award will be made.

(c) The Executive Director shall disseminate RFQs to those firms responding to the announcement and to qualified firms providing SOQs pursuant to Section 10000.2. The RFQs shall include a description of the project for which the services are to be required, the criteria upon which the award shall be made, the due date, SOQ submission and contract requirements.

§ 10000.6. Selection Process

After expiration of the period stated in the announcement prescribed in Section 10000.5, the Executive Director shall evaluate statements of qualifications and performance data that have been submitted to the Authority. Discussions shall be conducted with no less than three firms regarding the required service. From the firms with which discussions are held, the Executive Director shall select no less than three, in order of preference, based upon the established criteria, that are deemed to be the most highly qualified to provide the services required. Where three firms cannot be found, that could provide the required service, a full explanation including names and addresses of firms and individuals requested to submit qualifications must be entered in the files.

§ 10000.7. Negotiation

The Executive Director shall attempt to negotiate a contract with the most highly qualified firm. In negotiating fees and executing a contract, the procedure described in *Section 6106 of the Public Contract Code* (or any successor statute) shall be followed. When the Executive Director is unable to negotiate a satisfactory contract with this firm with fair and reasonable compensation provisions as determined by the procedure set forth in Section 10000.4, negotiations shall be terminated. The Executive Director may then undertake negotiations with the second most qualified firm on the same basis. Failing accord, negotiations shall be terminated. The Executive Director may then undertake negotiations with the third most qualified firm on the same basis. Failing accord, negotiations shall be terminated. Should the Executive Director be unable to negotiate a satisfactory contract at fair and reasonable compensation with any of the selected firms, additional firms may be selected in the manner prescribed and the negotiation procedure continued.

§ 10000.8. Audits

Contracts for A&E services are subject to standard accounting practices. The Executive Director may require pre-, interim- and/or post-award financial and performance audits as necessary to ensure contract services are delivered within the agreed schedule and budget.

§ 10000.9. Amendments

Where the Executive Director determines that a change in the contract is necessary during the performance of the services, the parties may, by mutual consent, in writing, agree to modifications, additions or deletions in the general terms, conditions and specifications for the services involved, including extensions of time, with a reasonable adjustment in the firm's compensation.

§ 10000.10. Contracting in Phases

Where the Executive Director determines it is necessary or desirable for a project to be performed in separate phases, the Executive Director may negotiate a price for the initial phase work. To establish a contract price for the initial portion of phased work, the Executive Director must first determine that the chosen firm is best qualified to perform the entire project. A contract for work to be performed in phases without a negotiated total contract price must provide that the state may, at its option utilize that firm to perform other phases of the work to be later negotiated and reflected in a subsequent written instrument. The procedures established herein with respect to estimates and negotiation as specified herein shall otherwise apply.

§ 10000.11. Executive Director's Power to Require Bids

Subject to Board approval, where the Executive Director determines that the services needed are technical in nature and involve little professional judgment and that requiring bids would be in the public interest, a contract may be awarded on the basis of bids rather than by following the foregoing procedures for requesting qualifications and negotiation.

§ 10000.12. Prohibited Practices and Conflict of Interest

(a) Practices which might result in unlawful activity, including but not limited to rebates, kickbacks, or other unlawful consideration are strictly prohibited. The Authority shall require a contract entered into pursuant to this chapter to include a provision in which the firm certifies that the contract was not obtained through rebates, kickbacks, or other unlawful considerations either promised or paid to an Authority employee. In addition to any other applicable legal proscriptions, failure to adhere to the certification may be cause for contract termination and recovery of damages under the rights and remedies due the Authority under the default provision of the contract.

(b) An Authority employee shall not participate in the selection process if the employee has a relationship, as specified in *Section 87100 of the Government Code*, with a firm seeking a contract subject to this chapter.

(c) Nothing in this chapter shall be construed to abridge the obligation of the Authority or the firm to comply with all laws regarding political contributions, conflicts of interest, or unlawful activities.

§ 10000.13. Small Business Participation

The Executive Director shall encourage small business firms to become certified through the State Department of General Services and to subscribe to the California State Contracts Register for advertisement notifications. The Executive Director shall participate in outreach programs to provide small business with information on Authority contracting opportunities.